E-21

ER

8 September 1976

NOTE FOR: Mr. Knoche

SUBJECT: IG Memorandum of Conversation Re Compliance With Executive Order 11905 in the SIGINT Field

1. The subject memorandum outlines a meeting which took place at NSA last week. The subject of discussion was whether CIA would be required to follow procedures for SIGINT collection established by NSA.

2. In light of what transpired at the meeting at NSA I suppose it is a legitimate question to ask whether either you or the DCI need to formally respond to the 14 July letter from Ellsworth which originally raised the question in paragraph 1. While as a practical matter John Waller's meeting with the NSA IG and General Counsel has informed them of our position (CIA will have separate legal guidelines for SIGINT collection, albeit parallel to NSA's), the sentence in Ellsworth's letter which provides that "All departments and agencies authorized to conduct SIGINT activities are to be guided by these approved procedures" is incorrect.

3. I recommend a letter from you to Ellsworth which will inform him of our separate procedures and make reference to the meeting at NSA.

25X1

[redacted]

A/DDCI

Distribution:
DDCI
25X1 [redacted]
ER

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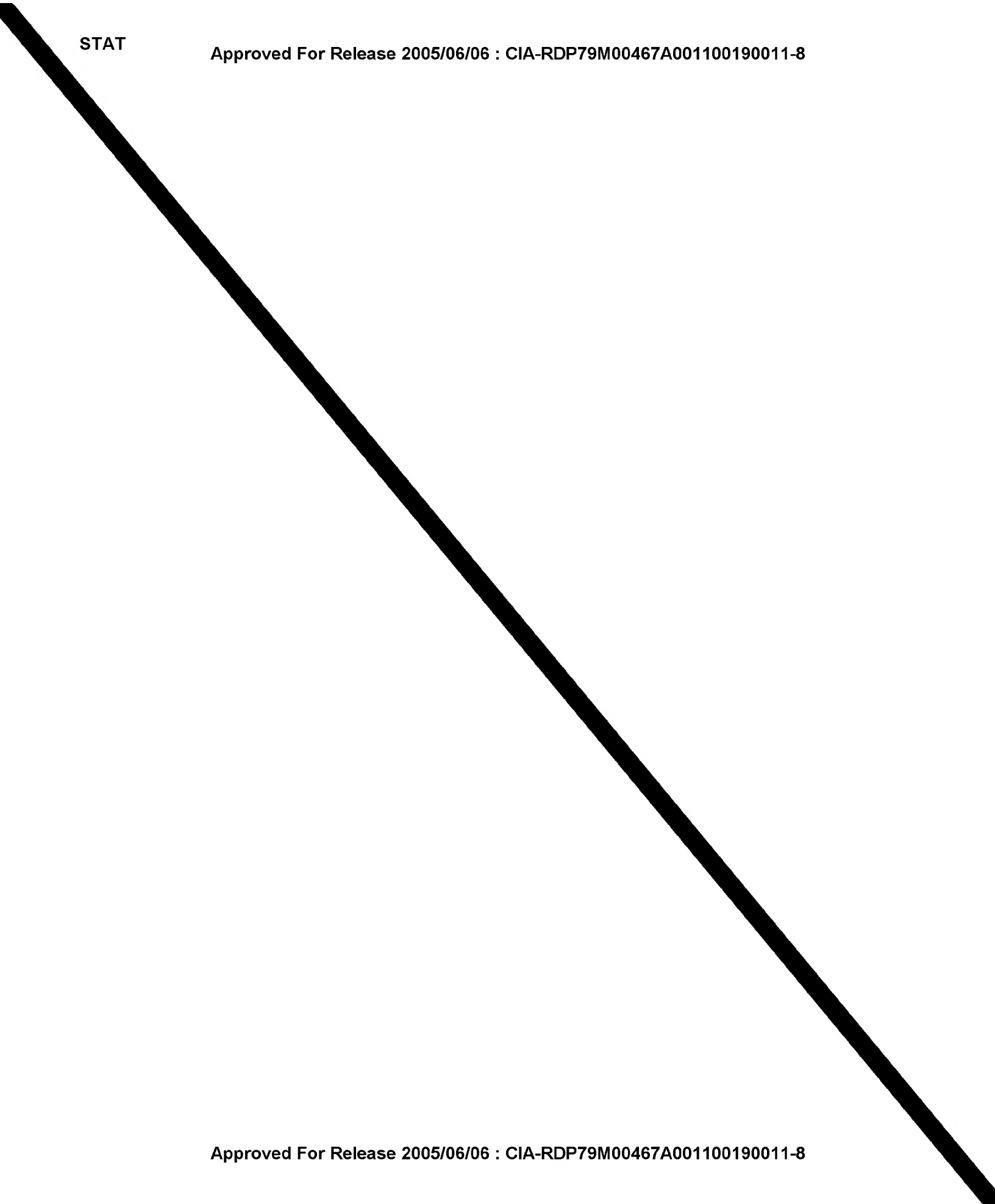
25X1

[redacted]



Approved For Release 2005/06/06 : CIA-RDP79M00467A001100190011-8

3 September 1976

MEMORANDUM OF CONVERSATION

SUBJECT: Compliance with Executive Order 11905 in the SIGINT Field

TIME AND PLACE: NSA Headquarters, Fort Meade, Office of NSA Inspector General, [redacted] 25X1
1 September 1976 from 1100 hours - 1230 hours

PARTICIPANTS: For CIA:

Mr. John H. Waller, Inspector General
25X1 [redacted] OGC
25X1 [redacted]

For NSA:

25X1 [redacted] Inspector General
Deputy Inspector General
General Counsel
Two additional members of the NSA Inspection Staff

REFERENCES:

(1) Memorandum for the DCI from Mr. Robert Ellsworth, Deputy Director of Defense dated 14 July 1976 Entitled "Conduct of SIGINT Activities"

(2) Letter to the DCI from Lt. General Lew Allen, Jr. dated 17 August 1976 Concerning Compliance with EO 11905 in the SIGINT Field (IG 76-2804)

(3) Letter of Response from the DCI to Lt. General Allen dated 25 August 1976 (ER 76-9854/A)

25X1 1. [redacted], as NSA Inspector General, chaired the meeting. The essence of his opening remarks were that Lieutenant General Lew Allen considers that he, as top SIGINT operational manager with legal guidelines for SIGINT collection

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25X1

from the Attorney General in the form of a revised USSID-18, has the obligation to implement USSID-18, and has a responsibility to make certain that other SIGINT collectors such as CIA, the Army, Air Force, Navy and FBI, are in compliance with it.

25X1

2. Mr. Waller and [redacted] described how CIA, too, had been working closely with the Office of the Attorney General in arriving at additional guidelines for CIA's SIGINT collection activities. Such guidance is expected imminently. Special guidance geared to CIA is required because of collection methods and systems, as well as legal responsibilities under EO 11905 which are unique to CIA. CIA's guidelines will be more restrictive than USSID-18 and, in any case, will supplement but not be inconsistent with USSID-18. Pending the completed guidelines from the Attorney General, CIA is operating with the approval of the Attorney General on the basis of interim CIA guidelines which parallel those contained in USSID-18. Mr. Waller agreed to send NSA a copy of the final guidelines when they are received.

25X1

3. [redacted] asked if CIA would be willing to share with NSA information contained in IG reports on SIGINT illegalities and improprieties, as provided quarterly to the Intelligence Oversight Board. NSA would like to receive even negative reports. Mr. Waller replied that this would not be desirable as a matter of principle in view of the confidentiality of IG reports.

4. As a practical matter, however, almost all of CIA-collected SIGINT is passed to NSA for publication by that body. NSA, therefore, has an opportunity and obligation to screen CIA's SIGINT product against USSID-18 guidelines before publishing it. Any improper or illegal items would be called to CIA's attention and would be withheld from publication. In view of the triple check of CIA-collected SIGINT -- first in the field at the point of collection, second in CIA Headquarters and third by NSA before publishing it -- it was unlikely that there would be any improper SIGINT reported from CIA. It was also pointed out that USSID-18 is permissive in describing those intercepts which may be forwarded to NSA. The restrictive provisions are those which pertain to that information which may be published.

5. It was explained that all of CIA's [redacted] 25X1 are in possession of guidance based on EO 11905 and USSID-18, interim Attorney General guidelines, and a handbook of comprehensive instructions called COIM.

6. It was further explained that component inspections for compliance with EO 11905 would check CIA's compliance and compliance system for SIGINT within CIA. Future field inspections would also include a review of SIGINT collection activities on site.

7. NSA's inspection system was described by Mr. [redacted] as comparable to CIA's. 25X1

8. [redacted] made reference to the requirement that NSA report yearly to the Attorney General statistics of SIGINT intercept violations, and asked if CIA followed the same procedure. 25X1 [redacted] stated that CIA had [redacted] reporting 25X1 25X1 [redacted] -- and that we will follow the same procedures in these cases.

9. [redacted] asked what our procedures were if an Ambassador pressed a station chief to restore an identity deleted from a dissemination in conformity with the Attorney General's guidance. If the Ambassador persisted, Mr. Waller explained, the matter would be adjudicated in Washington between the CIA and State Department, with Attorney General assistance being solicited as required. 25X1

10. NSA did not press its request for access to CIA Inspector General or Office of General Counsel quarterly reports to the IOB as they involved SIGINT and seemed to be satisfied with CIA's procedures to insure compliance with EO 11905.

(signed)
John H. Waller

John H. Waller
CIA Inspector General

cc: D/DCI/IC w/3 references attached
25X1 SA/DDCI [redacted] w/3 references attached
AC/Div D/DDO w/3 references attached
25X1 OGC [redacted] w/3 references attached
IG Chrono w/3 references attached
IG Subject Chrono (IOB Community IG's) w/3 references attached
HJ Chrono w/3 references attached

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Executive Registry
76-9854/A

XRef SC-09073-76

E-21

25 August 1976

Lieutenant General Lew Allen, USAF
Director, NSA/Chief, CSS
National Security Agency
Central Security Service
Fort George G. Meade, Maryland 20755

Dear General Allen:

Thank you for your letter of 17 August 1976 (Serial: N1026) suggesting that the Inspectors General of NSA and CIA consult and jointly develop a plan to insure compliance with Executive Order 11905 in the SIGINT field.

I have asked my Inspector General, Mr. John H. Waller, to meet with [redacted] Jr., Inspector General of NSA, to discuss this matter. They plan to have an initial meeting on 1 September 1976.

25X1

Sincerely,

George Bush
Director

E-21

STAT

IG:JHWALLER:hj [redacted]
24 August 1976
Distribution:
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Remarks:

I checked with NSA and they intend for the attached to be unclassified. It is, however, related to the Top Secret 14 July memo which I attach for reference. You may wish to mention it at the morning meeting.

STAT

19 Aug 76

Date

3637 (10-76)

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N1026
17 August 1976

VR SC-09043
E-21

The Honorable George Bush
Director, Central Intelligence Agency
Langley, Virginia

Dear Mr. Bush:

In his memorandum of 14 July 1976, Deputy Secretary of Defense Ellsworth advised of the necessity for insuring that all SIGINT activities conducted by the government are in conformity with E.O. 11905 and with specific procedures provided to the Director of the National Security Agency by the Attorney General. These procedures have been promulgated by NSA in USSID 18.

I am confident that you share my concern, as the manager of U.S. SIGINT activities, that these procedures are followed carefully and that each of the concerned departments and agencies have mechanisms to assure full compliance. To that end I propose that our Inspectors General be tasked to develop jointly a plan of action for our mutual approval.

25X1 If you agree, I suggest that your Inspector General contact mine, [redacted] (688-6666) so that they can proceed accordingly.

Sincerely,

LEW ALLEN, JR.
Lieutenant General, USAF
Director, NSA/Chief, CSS

Copy Furnished:
IG, DEF INTEL

E-21

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Approved For Release 2005/06/06 : CIA-RDP79M00467A001100190011-8

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

SEP 13 1976

Dear Monroe:

I have just returned from vacation, and while the matter may now be past history, I wish to respond to the letter which George Aldrich, as Acting Legal Adviser, sent me on August 27, making various comments on S. 3197.

The Department of Justice at all times made clear to the Senate Intelligence Committee and its staff that our support of the bill would unqualifiedly cease if any provisions were added which would empower the courts to review the Executive determination that information sought to be obtained was in fact foreign intelligence information, as defined in the bill. Although the Committee was not happy with our position, it accepted it. Because, however, the Committee was determined to do all in its power to assure that certifications stating that certain information was foreign intelligence information were not made lightly or arbitrarily, it added Section 2524(a)(8)(E)(i), which it felt would require the appropriate Executive officials to exercise a reasoned judgment in making their certifications. George's fear that this provision would result in judicial evaluation of the certification is, I believe, unjustified. Section 2525(a)(6) specifically states that the judge shall issue an order if, among other things, he finds "the application which has been filed contains the description and certification or certifications specified in section 2524(a)(7) and (8)." Nothing in the bill gives the judge authority to go behind the certification or to question the reasonableness of it. This is clear in the language of the statute, and the Committee Report does everything to emphasize the point short of drawing pictures. In the Section-by-Section Analysis, Section 2524(a)(8)(E)'s requirement is described as "[ensuring] that those making certifications carefully consider the

cases before them and avoid the temptation to simply sign off on certifications which consist largely of boilerplate language." S.Rep.No. 94-1161, 94th Cong., 2d Sess. 38 (1976) (offset copy). The discussion of Section 2525(a)(6) states: "If the application meets the requirements of those sections [that the application contain the requisite certifications], the court is not permitted to substitute its judgment for that of the executive branch official(s)." Id., at 46. It goes on to acknowledge explicitly that the bill does "not [allow] the court to determine whether or not the information sought is 'foreign intelligence information' which cannot be obtained by other investigative techniques." Id. In short, the bill clearly does not permit the action which George fears.

George's second comment was addressed to Section 2525(c). Under the bill as originally proposed and endorsed by the Administration, the judge could require such other information as might be necessary to make his determinations. See Section 2524(c). Thus, the additional language in 2525(c) added by the Senate Intelligence Committee in fact establishes no new requirement; the judge could obtain the same information under 2524(c). The real purpose of the added language was to make clear that the judge can require additional information with respect to applications for extensions in the same way he can for original applications. You should note that the added language does not require the product of surveillances to be given to judges automatically upon applications for extensions; as under 2524(c) the judge must request that information. As George acknowledged, there are situations where such information might be relevant to the judge's determinations, but it is hard to conceive why a judge would request information obtained from diplomatic traffic. George's suggested remedy of adding "under 2525(a)(3)" after "probable cause" merely illustrates the innocuous effect of this provision, because in fact the only probable cause findings the judges make are under Section 2525(a)(3).

Third, George suggested that Section 2526(c) should be left as reported by the Judiciary Committee. Essentially we agree, and we fought hard on the point but did not prevail. If the change proximately affects the concerns of any agency, however, it is the prosecutorial concerns of this Department; and we believe we can live with it. Section 2526(c) only applies to those prosecutions in which evidence derived from

foreign intelligence electronic surveillances is used. These are, to begin with, relatively rare because of the risk of disclosure of sensitive information. Moreover, even in these cases the court must make disclosure only when there is a reasonable question as to the legality of the surveillance, the resolution of which would be promoted by an adversary hearing. We believe that in most cases there will be no such reasonable question. Finally, the judge only needs to disclose relevant portions of the order and/or application, and it may well be that such portions can be sanitized in a manner that will preserve sensitive information from disclosure. In our judgment, the net effect of this provision on prosecutions will be minimal, although if the matter comes before the House we will try again to have the language changed.

I will be happy to discuss any of these points with you or George further, if you think that would be useful.

Sincerely,

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

The Honorable
Monroe Leigh
Legal Adviser
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

cc: Jack Marsh, The White House
William Hyland, National Security Council
Robert Ellsworth, Deputy Secretary of Defense
George Bush, Director of Central Intelligence

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31 Aug.
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